SUPREME COURT OF THE UNITED STATES.

No. 66.

SALLY LADIGA, PLAINTIFF IN ERROR,

vs.

RICHARD DE MARCUS ROLAND AND PETER HIEFNER, DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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J. & G. S. Gideon, Printers.

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the Supreme Court of the State of Alabama, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Supreme Court before you, being the highest court of law and equity in said State in which a decision could be had in a suit between Sally Ladiga and Richard de Marcus Roland and Peter Heifner, wherein was drawn in question the validity of a treaty, or statute of, or an authority exercised, under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause, or of a treaty, or statute of, or a commission held under the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said Sally Ladiga as by her complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause to be further done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the hon. Roger B. Taney, Chief Justice of the Supreme Court, this 27th day of August, in the year of our Lord one thousand eight hundred and forty-two.

Allowed by HENRY W. COLLIER,
Ch. Justice of the Sup. Court of Alabama.

Citation.

The United States of America, to Richard de Marcus Roland and Peter Heifner, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on

the first Monday in January next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of Alabama, wherein Sally Ladiga is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this day of , in the year of our Lord one thousand eight hundred and forty-two.

HENRY W. COLLIER,
Ch. Justice Sup. Court of Alabama.

THE STATE OF ALABAMA, *Benton county, ss.*

Before me, William H. Estill, a justice of the peace in and for said county, this day personally appeared Richard G. Earle, and made oath that, on the 7th day of December, 1842, he delivered a true and correct copy of the above citation to Richard de Marcus Roland, and left one at the dwelling-house of Peter Heifner.

R. G. EARLE.

Sworn and subscribed before me, this 7th day of December, 1842.

W. H. ESTILL,
Justice Peace, Benton county.

Filed 19th December, 1842.

Be it remembered, that at January term, one thousand eight hundred and forty-two, of the Supreme Court of the State of Alabama, and on the 24th day of January, there was filed in the office of the clerk of said court, a writ of error and transcript of record in the words and figures following, to wit:

Writ of error to Benton Circuit Court.

THE STATE OF ALABAMA:

To the clerk of the circuit court of Benton county, greeting:

Because in the record and proceedings, and also in giving judgment in a cause which was in our said circuit court by our writ of *capias ad respondendum* between Sally Ladiga, plaintiff, against Richard de Marcus Roland and Peter Heifner, defendants, of a plea of trespass quare clausum fugit, error hath intervened to the great damage of the said Sally Ladiga, as by her complaint we are informed. We being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties in this behalf, do command you, that if judgment be thereupon given, then you send to our judges of the supreme court, distinctly and openly, under your hand and seal, the record and proceedings of the cause aforesaid, with all things concerning the

same, and this writ, so that they may have them before the supreme court at the city of Tuscaloosa on the third Monday in January next, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon for correcting that error, what of right and according to law ought to be done.

Witness James Crow, clerk of our circuit court for Benton county, this 24th day of November, in the year 1841.

Issued the 24th day of November, 1841.

Attest: JAMES CROW, *Clerk.*

Be it remembered, that at a circuit court began and held in and for the county of Benton, and State of Alabama, (at Jacksonville, the place appointed by law for holding the same,) on the third Monday after the fourth Monday in September, A. D. one thousand eight hundred and forty-one, being on the 18th day of October, 1841, his honor John P. Booth, one of the circuit judges of said State presiding, the following proceedings were had, viz:

SALLY LADIGA vs. ROWLAND and HEIFNER } Trespass quare clausum fugit.

Capias.

The State of Alabama, to any sheriff of the State of Alabama, greeting:

You are hereby commanded to take the bodies of Marcus D. Roland and Peter Heifner if to be found in your county, and them safely keep so that you may have them before the honorable the circuit court to be holden for Benton county, at the place of holding said court, on the third Monday after the fourth Monday of September instant, to answer to Sally *alias* Sally Ladiga, in a plea of trespass *quare clausum fugit* to the damage of the plaintiff of ten thousand dollars as is said. Herein fail not, and have you then and there this writ.

Witness James Crow, clerk of the said court, this 28th September, 1838.

Issued 28th September, 1838.

Attest: JAMES CROW, *Clerk.*

Endorsement.

This action is instituted to try titles to the east half of section No. 2, in township No. 14, in range No. 8 east of the basis meridian in the Coosa land district, viz: in Benton county, and also to recover the within damages for the trespass and wrongful entry made by the defendants in and upon the same. No bail required.

CHILTON & BROWN, *Attys. for plff.*

Sheriff's Endorsement.

Came to hand the same day issued. Executed on Rowland 9th October, 1838; on Hiefner 10th October, 1838.

WM. ONAR, *Shff.*
By his deputy WM. WOOD.

Narratio.

Circuit Court, Benton county, Fall term, 1838.

Sally *alias* Sally Ladiga, plaintiff in this suit, by attorney, complains of Marcus D. Roland and Peter Heifner, defendants in this suit in custody, &c. in a plea of trespass quare clausum fugit. For this, that the said plaintiff heretofore, to wit: on the 24th day of March, A. D. 1832, at viz: in the county aforesaid was seized and possessed as of her own demesne of a certain tract or parcel of land, known as the east half of section two, in township 14, in range 8 east, in Benton county, and the close and messuage thereon situate, and being so possessed afterwards, viz: on the day and year aforesaid, in the county aforesaid, the said defendants with force and arms and with strong hand, broke and entered the close of said plaintiff upon said land situate, and then and there forcibly ejected and expelled said plaintiff from said land, and the said plaintiff being so as aforesaid expelled and ejected, the said defendants did from the ——— day of ——— to wit, the day and year aforesaid, keep from and out of the possession of said land and premises, and with force and strong hand do still keep said plaintiff from and out of the possession thereof, against the peace and dignity of the State of Alabama. And also for this, that heretofore, to wit: on the 24th day of March, 1832, the said plaintiff, being the head of a Creek Indian family, and a member of the Creek Indian tribe, residing east of the Mississippi river, to wit: in the county of Benton, was and is, by virtue of the treaty made and concluded at the City of Washington on the day and year last aforesaid, between the United States and the Creek tribe of Indians, of which she was a member as aforesaid, entitled to select as her reservation of land one half section, which selection was by said treaty to be so made as to include the improvement of the said plaintiff, and the said plaintiff avers that at the time of the execution and ratification of said treaty, she was the head of a Creek Indian family, and that she resided upon and had an improvement on the east half of section No. 2, in township No. 14, in range No. 8, east of the basis meridian, in the Coosa land district, to wit: in the county of Benton aforesaid, which improvement this plaintiff avers could have been included in her selection, and the plaintiff further avers that under and by virtue of said treaty she was authorized to select, and did select, to wit: on the day and year last aforesaid, the said east half of section 2, in township 14, in range 8, &c. including her said improvement and messuage, and continued to

occupy the same from the said ——— day to the ——— day of ——— in the year ——— to wit: before the commencement of this suit, and being so possessed of said land and the close and messuage thereupon situate, the said defendant on the day and year aforesaid, to wit: within four years before the commencement of this suit, at ———, in the county aforesaid, with force and arms and strong hand, unlawfully did enter the said plaintiff's close, and then and there did expel, eject and turn the said plaintiff out of the possession of said land, and the close and messuage thereupon situate, and the said plaintiff being so expelled did keep out of the possession thereof by force and arms unlawfully, and the defendants continue to hold unlawfully the possession of said land, and to receive the rents and profits accruing therefrom against the peace and dignity of the State of Alabama. Wherefore the plaintiff says she has been and is greatly injured and damnified, and has sustained injury and damage to the amount of ten thousand dollars, and therefore she brings her suit, &c.

CHILTON & BROWN, *Plffs. Attys.*

Pleas.

Plea.—General issue in short by consent.

COCHRAN, &c. *for Defl.*

SALLY LADIGA vs. R. D. ROWLAND et al. } Fall term, 1838.

Order requiring security for costs.

On motion, and it appearing to the satisfaction of the court that the plaintiff in this cause is not a resident citizen of the State of Alabama, it is therefore ordered that unless she give security for costs on or before the next term of the court, that this suit be dismissed.

SALLY LADIGA vs. R. D. ROWLAND et al. } Spring term, 1839.

Came Irby Boyd and James L. Lewis, and acknowledged themselves security for costs in the prosecution of this suit in behalf of plaintiff.

SALLY LADIGA vs. R. D. ROWLAND et al. } Spring term, 1839.

Judgment.

This day came the parties by their attorneys, and thereupon the said defendants demurred to said plff. declaration, and the said plff. joined in said demurrer, and argument thereupon being had, and

the court being fully advised of the matters of law arising, it seems to the court there is no error in the plaintiff's declaration. It is therefore considered that said demurrer be overruled, and the said defendants thereupon pleaded not guilty, and issue thereupon being taken, came a jury of good and lawful men, viz: William T. Yeatmen and eleven others, who being elected, empannelled, tried, and sworn, well and truly to try the issue joined upon their oaths, do say they find the issue in favor of the plaintiff, that defendants are guilty in manner and form as the said plaintiff hath thereof complained against them, and they find the title to the land in the plaintiff's declaration mentioned, to wit: the east half of section two, in township fourteen, in range eight, east, in the Coosa land district, to be in the plaintiff, and they assess the plaintiff's damage to five dollars per acre per annum, and the plaintiff thereupon comes into court, and remits the damages so as aforesaid assessed. Whereupon it is considered by the court that the plaintiff do recover of the said defendants the said land, and the possession of the same in the said plff's. declaration mentioned, and the costs of this suit, and that writs of *habere facias and execution* issue, &c.

Bill of exceptions.

SALLY (alias) SALLY LADIGA
vs.
RICHARD D. (alias) MARCUS D. ROLAND
and PETER HEIFNER.

Be it known that at the spring term of the circuit court for Benton county, the above case came on for trial, and the defendant's counsel called on the court to charge the jury.

1. That if they believed that this suit was brought since the expiration of five years after the treaty under which she claimed was ratified, they must find against the plff., unless she produce a patent from the United States.

2. That as the declaration alleges the trespass to have been committed on the 24th March, 1832, and the treaty was not ratified until the 4th April, 1832, plaintiff could not recover in this suit.

3. That she could not hold possession in 1833 by a tenant, and the court charged if she (plaintiff) was removed by order of the Government, it was not material that she should hold possession either in person or by tenant.

4. That this court cannot disregard the patent produced by defendants, and give the land to one holding no patent, when no fraud is alleged or proved. The court charged that if plff. was the head of a family at the time of making the treaty, and entitled to her reservation as such, which reservation included her improvement, (the land sued for,) the patent passed nothing, the title having vested in her by operation of the treaty, of which she could not be divested by any subsequent act of the government of the

United States, or its agents, which charges the court refused to give. To the charges asked to be given and refused, and the charges given, the defendants by their counsel except, and tender this bill of exceptions, and pray the court to sign and seal it, and that it be made a part of the record in said case. 29th May, 1839.

JOHN P. BOOTH, [L. S.]
Judge Cir. Court.

Error Bond.—Bond.

THE STATE OF ALABAMA, *Benton county.*

Know all men by these presents, that we, Richard D. Roland and Peter Heifner, and Jeremiah Murphy are held and firmly bound unto Sally Ladiga, her heirs, executors, or administrators, in the sum of five hundred dollars, for the payment of which we jointly and severally bind ourselves, our heirs, executors, or administrators firmly by these presents. Sealed with our seals, and dated this 25th day of May, 1839.

The condition of the above obligation is such, that whereas the above bound Roland and Heifner have this day applied for and obtained a writ of error returnable to the June term of the Supreme Court of Alabama at Tuscaloosa to supersede and reverse a judgment recovered by the said Sally Ladiga against the said Roland and Heifner, at the spring term, 1839, of the circuit court of Benton county, for ——— dollars, besides costs. Now if the said Roland and Heifner shall prosecute to effect their said suit in the supreme court of the said State of Alabama, and shall pay and satisfy such judgment as the supreme court shall render in the premises, then this obligation to be null and void, otherwise to remain in full force and effect.

R. D. ROWLAND. [L. S.]
his
PETER ⋈ HIEFNER. [L. S.]
mark.
J. MURPHY. [L. S.]

Attest: J. CROW.

Certificate from the Supreme Court.

The State of Alabama to the clerk of the circuit court of Benton county, greeting:

It is hereby certified, that the record and proceedings of said court in a certain action of trespass to try titles wherein by said court at the spring term, 1839, it was considered, that Sally Ladiga recover against said Richard D. alias Marcus de Roland and Peter Heifner the said land, viz: E ½ of sec. 2, in township 14, in range 8 east, in Coosa land district, as in the plaintiff's declaration mentioned, besides costs, and that writs of *habere facias possessionem* and execution issue, being brought before our Supreme Court

by writ of error issued the 25th day of May, 1839, on behalf of said Roland and Heifner. It was thereupon by our Supreme Court, on the 12th day of June, 1839, considered that said judgment of said circuit court be in all things reversed, annulled, and held for nought, and that said plaintiff in error recover against said defendants in error the costs accruing in said supreme court, and that said cause be remanded to said circuit court for further proceedings.

Witness James B. Wallace, clerk of the Supreme Court, this 6th day of July, 1839.

JAMES B. WALLACE, *Clerk.*

Judgment for costs.

SALLY LADIGA
vs.
R. D. ROLAND et al. } Fall term, Oct. 16th, 1839.

This day came the parties by their attorneys, and the plaintiff continues her cause on her affidavit. In this cause, upon the production of the certificate of the clerk of the supreme court certifying that a judgment, which was obtained at the spring term of the circuit court for Benton county, 1839, in favor of Sally Ladiga against Roland and Heifner, in trespass to try titles to the east ½ of section 2, township 14, range 8 east, in Coosa land district, was by the said supreme court reversed and held for nought, at their June term of said court, A. D. 1839. It is therefore considered by the court that the said Richard D. Roland and Peter Heifner recover against the said Sally alias Sally Ladiga and Erby Boyd and James L. Lewis, her securities for the costs of said suit, the sum of 62 $\frac{14}{100}$ dollars expended in said suit, in the circuit court of Benton county aforesaid, for which execution may issue.

Spring term, 1841, April 14.

Came the parties into open court, and continued their cause by consent.

SALLY LADIGA
vs.
R. D. ROWLAND and PETER HEIFNER. } Fall term, 1841, Oct. 21.

Judgment.

This day came the parties by their attorneys, and thereupon came a jury of good and lawful men, viz: John T. A. Hughes and eleven others, who being elected and sworn well and truly to try the issue joined, upon their oaths do say, we the jury do find the issue in favor of the defendants. It is therefore considered by the court that the defendants go hence without day, and recover of the plaintiff their costs about their suit in this behalf expended, for which execution may issue; defendants to be in mercy, &c.

Bill of exceptions.—Bill of exceptions.

Trespass to try titles in the circuit court of Benton county, Alabama.

Be it remembered that upon the trial of the above entitled cause the plaintiff claimed title to the land in controversy under and by virtue of the treaty made and concluded between the United States of America and the Creek tribe of Indians east of the Mississippi river on the 24th day of March, A. D. 1832, the plaintiff introduced the following witnesses, viz: Chr. A. Green, John Goodwyn, Horatio Griffin, Benjamin Pope, Thos. C. Henderson, John Boyd, Thos. E. Montgomery, and Matthew M. Houston, by whom she proved substantially the following facts:

1. That said plaintiff at the date of treaty aforesaid, to wit: on the 24th March, 1832, and long anterior to that period, and from thence to the present time, was and is the head of the Creek Indian family residing in and having an improvement upon the E half of section 2, township 14, range 8 E, &c. in the district of land subject to sale at Mardisville, in the State of Alabama, which land is situate in Benton county, and is the same sued for in this action.

2. That the said land at the commencement of this suit, and ever since, has been, and is worth three thousand dollars and more. That the rents and profits of the same, since the institution of this suit, have been worth more than two thousand dollars. That the rents and profits have been received by defendants, who had the possession of said land at and before the commencement of this suit, and from thence until the present time.

3. It was further proved by said witnesses, that at no time was there any other Indian improvement on said land, and that the improvement and residence of the plaintiff alone was embraced in said half section by the legal lines of survey, and that plaintiff had lived there for many years, and raised a numerous family of children.

4. It was further proved, by the production of the census roll taken by order of the Government of the United States, of the heads of families of the Creek tribe, in conformity with the second article of the treaty aforesaid, that the plaintiff was duly enrolled by the agent of the United States charged with this duty, as one of the heads of families belonging to the said Creek tribe, and as entitled to land under said treaty—her identity being shown by the witnesses.

5. That in 1834, the Government, by agents charged with this duty, located the Indians. That the formula of location, as practised by said agent, consisted in calling the Indians belonging to the respective Indian towns together, and in the presence of the chiefs and head men in the town, the agent would call over the names registered by the enrolling agent as being the heads of families in that town. That the persons whose names were so registered would appear and answer to their names, and their identity

and residence, and also their improvements, would be proved, &c., pointed out by the chiefs and head men so assembled; and the agent would then designate, by figures and letters, the land opposite the name of each reservee on said census roll, to which he supposed them entitled under the treaty.

6. That upon the agent coming into the Tallasahatchee town of Indians, for the purpose of making the locations aforesaid, the plaintiff appeared before him, and being identified as the same whose name was enrolled on the census list of said town, claimed the land in dispute, on which her improvement, at the date of the treaty aforesaid, was situated, and which she then informed him she had selected as her reservation—there being no other improvement, location, or conflicting claim thereto at that time. That the deputy locating agent, who located the town to which she belonged, not regarding her the head of a family, by reason of her children having married and left her, and none but orphan grand-children residing with her, refused to recognise her rights under the treaty, or set apart the land so by her selected opposite her name on the roll, as in other cases. That from the date of the treaty aforesaid, until the year 1837, she made continual and repeated applications to the Government officers to assert her rights to said land, and through them to the Government itself; until, in 1837, she was forced to leave the country and emigrate to Arkansas, by the armed troops in the employ and under the directions of the Government. That she never had abandoned her claim, but insisted on her right under the treaty, to enforce which this action was brought. M. M. Houston, who was the locating agent, testified as to the reasons which induced him to refuse a recognition of plaintiff's right.

The defendant then introduced a patent or grant from the United States, signed by the President, Martin Van Buren, dated the 21st day of December, 1837, which, after reciting that by virtue of the treaty aforesaid of the 24th March, 1832, between the United States and Creek tribe of Indians, the United States agreed that twenty sections of land should be selected, under the direction of the President, for the orphan children of said tribe, and divided and retained or sold for their benefit, as the President might direct; and that the President, in making such selection, had included section 2, township 14, range 8, east, and divided the same into quarter sections; and said tract having been sold pursuant to instructions, Canton, Smith and Heifner had become the purchasers of the southeast quarter of said section, which purchase had been sanctioned and approved by the President on the 3d November, 1836—gave and granted to said Canton, Smith and Heifner, the said southeast quarter, to them, their heirs, &c., for ever, as tenants in common, and not as joint tenants; which grant, being properly attested, was read to the jury. Another patent or grant from the Government of the United States, similar in all its form to that above named, and containing like recitals, bearing the same date and properly authenti-

cated, conveying the northeast quarter of said section to Richard de Marcus Roland, was offered and read to the jury. And this being all the testimony, the plaintiff's counsel asked the court to charge the jury as follows:

1. That if they believed from the evidence that the defendants were in possession of the land sued for at the institution of this suit, and continued to hold the same adversely, receiving the rents and profits thereof; and that if from the evidence the jury were further satisfied that the plaintiff, at the date of the treaty made and concluded at the city of Washington between the United States of America and the Creek tribe of Indians east of the Mississippi river, to wit, on the 24th day of March, 1832, was the head of a Creek Indian family, and that the United States enrolled her name under the provisions of the treaty aforesaid, requiring a census to be taken, &c., as the head of a Creek family; and that said plaintiff, before and at the time of the ratification of said treaty, and from thence until she was forced to leave the country by the United States, possessed said lands sued for, having an improvement and residence upon the same; and if the jury believe from the testimony that said plaintiff did select the said half section, including her improvement, and that such selection was so made without conflicting with the rights of any other Indian, or the rights or duties of the government reserved, secured, or prescribed by the treaty aforesaid, and if the proper officers of the government were duly notified of such selection by the said plaintiff, and that she had never forfeited her rights by a voluntary abandonment of the lands sued for, but had been compelled, by force or coercion on the part of the United States, to emigrate from the country and leave the land, then the plaintiff is entitled to recover in this action.

2. The plaintiff asked the further charge—that under the second article of the said Creek treaty of the 24th March, 1832, each head of a Creek Indian family, after the land ceded by said treaty had been surveyed, was entitled to select a half section of land so as to include their improvement, if the same could be made; and if the jury believed from the proof that the plaintiff was the head of a Creek family, and entitled to a selection under the treaty, and that after such survey she could select, and did select, the half section in dispute, and in a reasonable time notified the government of such selection, and had never voluntarily abandoned said land; then plaintiff in such case acquired a vested right to said land inchoate, but sufficient under the laws of this State, coupled with possession, to maintain this action, and that such right could not be defeated by the subsequent disposition of the same by the United States to the defendants.

3. The plaintiff asked the court further to charge the jury: that if the plaintiff was entitled to select a half section of land, under the treaty aforesaid, as the head of a Creek family, duly enrolled as such, and the selection could have been so made, and was so

made, as to include her improvement within the selection; that in such case the treaty itself located the plaintiff; and if the government, with a knowledge of such selection and location, exposed the land to sale, or reserved it for other purposes, such sale or disposition could not prejudice the right of the plaintiff. All which charges the court refused to give, and in lieu of them charged the jury: that notwithstanding the plaintiff was the head of a Creek family, duly enrolled as such by the authorized agent of the government, and entitled to select a half section under the second article of the treaty of the 24th March, 1832; and that although, after the land ceded by the treaty aforesaid had been surveyed, she could have selected, and did select, the half section in dispute, which included her improvement, and of which selection she duly notified the government; yet the refusal of the locating agent to recognise her right and to set apart the land by a designation of it opposite her name upon the roll, as in other cases of location, coupled with the subsequent sale and grants of the same land to the defendants by the United States, whether right or wrong, divested the plaintiff of all right to said land, and vested in the defendants in this action titles paramount, which the plaintiff could not gainsay or dispute. To which refusals of the court to give the charges asked by the plaintiff, and to the charge given in lieu of them by the court, the plaintiff excepts, and now here tenders this bill of exceptions, which is signed and sealed by the court, and ordered to be made a part of the record of this cause, which is accordingly done.

JOHN P. BOOTH, [L. S.] *Circuit Judge.*

At this term of the court, fall term, 1841, Early Boyd and Samuel Boyd came into court and acknowledged themselves security for costs for the plaintiff's prosecution of this suit.

Patent.

The United States of America, to all to whom these presents shall come, greeting:

Whereas, by the treaty made and concluded in the city of Washington, on the twenty-fourth day of March, one thousand eight hundred and thirty-two, between the United States of America and certain chiefs of the Creek tribe of Indians on the part of said tribe, the United States agreed that twenty sections of land should be selected under the direction of the President for the orphan children of the said tribe, and divided and retained, or sold for their benefit, as the President might direct; and whereas twenty sections were selected as aforesaid, and divided into quarter sections, and directed to be sold for their benefit, of which the southeast quarter of section two, in township fourteen, of range eight east, containing one hundred and fifty-nine acres and sixty-seven hundredths of an acre, in the Coosa land district of Alabama, forms a part, and the said tract

having been sold in pursuance of instructions to Carleton, Smith and Heifner, who have complied with the terms and conditions of sale, and the President of the United States having approved of the sale of the said tract on the third November, 1836; now know ye, that the United States of America, in consideration of the premises, and in conformity with the provisions of said treaty, have given and granted, and by these presents do give and grant, unto the said Carlton, Smith and Heifner, and to their heirs, the tract of land above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said Carlton, Smith and Heifner, and to their heirs and assigns forever as tenants in common, and not as joint tenants.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twenty-first day of December, in the year of our Lord one thousand eight hundred and thirty-seven, and of the independence of the United States the sixty-second.

By the President. MARTIN VAN BUREN,
By A. VAN BUREN, *Secretary.*
[L. S.] H. M. GARLAND,
Recorder of the General Land Office.

Recorded vol. 1, pages 42 and 43, ex'd.

Patent.

The United States of America, to all to whom these presents shall come, greeting:

Whereas, by the treaty made and concluded in the city of Washington, on the twenty-fourth day of March, one thousand eight hundred and thirty-two, between the United States of America and certain chiefs of the Creek tribe of Indians on the part of said tribe, the United States agreed that twenty sections of land should be selected under the direction of the President for the orphan children of the said tribe, and divided and retained, or sold for their benefit, as the President might direct; and whereas twenty sections were selected as aforesaid, and divided into quarter sections, and directed to be sold for their benefit, of which the northeast quarter of section two, in township fourteen, of range eight east, containing one hundred and fifty-nine acres and sixty-seven hundredths of an acre, in the Coosa land district of Alabama, forms a part, and the said tract having been sold in pursuance of instructions to Richard de Marcus Roland, who has complied with the terms and conditions of sale, and the President of the United States having approved of the sale of said tract on the 3d November, 1836; now know ye, that the

United States of America, in consideration of the premises, and in conformity with the provisions of said treaty, have given and granted, and by these presents do give and grant, unto the said Richard de Marcus Roland, and to his heirs, the tract of land above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said Richard de Marcus Rowland, and his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twenty-first day of December, in the year of our Lord one thousand eight hundred and thirty-seven, and of the independence of the United States the sixty-second.

By the President. MARTIN VAN BUREN,
By A. VAN BUREN, *Secretary.*

[L. S.] H. M. GARLAND,
Recorder of the General Land Office.

Recorded vol. 1, pages 43 and 44, ex'd.

Assignment of Errors.

SALLY, *alias* SALLY LADIGA, vs. R. D. ROLAND & PETER HEIFNER. } Supreme Court, January term, 1842.

The plaintiff, by Wm. P. Chilton, her attorney, comes and says, that in the record of the proceedings, and rendition of judgment, in the circuit court of Benton county, manifest error hath intervened in this, viz:

1. The court erred in refusing the charges and instructions asked for by the plaintiff and in the charge given, as shown by the bill of exceptions taken upon the trial.

2. The court erred in rendering judgment for costs upon the production of the certificate of reversal from the Supreme Court.

For these errors, the plaintiff in error prays the judgment of said circuit court may be reversed, annulled, and held for nought.

W. P. CHILTON,
Atto. for plaintiff.

Book L, p. 594, in the Supreme Court, 4,091.—Sally Ladiga vs. Richard de M. Roland and Peter Heifner.—Scire facias issued 4th March, 1842.—Came to hand 29th March, 1842.—Executed by serving John Cochran, att'y, and R. D. Roland, March 31, 1842.

R. S. PORTER, *Sheriff.*
By WM. J. WILLIS, *D. S. Benton County.*

Citation.

The State of Alabama, to any sheriff of the said State, greeting:

Whereas in a certain action of trespass to try titles between Sally

Ladiga, plaintiff, and Richard de Marcus Roland and Peter Heifner, defendants, a judgment was rendered by our circuit court of Benton county at the fall term thereof, 1841; and said Sally Ladiga hath, by writ of error on her behalf, caused the record of said cause to be brought before our Supreme Court. We, therefore, command you to make known to the said Richard de Marcus Roland and Peter Heifner that, if to them it seems expedient, they appear before our Supreme Court, at the capitol in Tuscaloosa, on the first Monday in June next, to hear and answer the matters assigned as error in the record aforesaid, and to do and receive what our Supreme Court shall in this behalf consider, and have you then and there this writ, with your endorsement thereon.

Witness James B. Wallace, clerk of said court, this 4th day of March, 1842.

JAMES B. WALLACE, *Clerk.*

Certificate.

THE STATE OF ALABAMA, *Benton County.*

I, James Crow, clerk of the circuit court of Benton county, Alabama, do hereby certify that the foregoing is a full, true, and perfect transcript of the record and proceedings in the case of Sally Ladiga, plaintiff, against Richard de Marcus Roland and Peter Heifner, defendants, according to the papers now on file in my office.

In testimony whereof, I have hereunto set my hand and affixed my private seal (there being no seal of office) at office, this 24th day of November, 1841.

JAMES CROW, *Clerk.* [L. S.]

Judgment of Supreme Court.

SALLY LADIGA vs. ROLAND & HEIFNER.

Be it further remembered, that at June term, 1842, of the Supreme Court, and on the 8th day of June, being a day of said term, present, the honorable Henry W. Collier, chief justice, and Henry Goldthwaite and John J. Ormond, judges, came said parties by their attorneys, and thereupon the record in this cause, and the matters assigned for error therein, being argued and examined, it seems to the court that in the record and proceedings of said circuit court there is no error. It is, therefore, considered that the judgment of said circuit court be in all things affirmed, and that the said Richard de Marcus Roland and Peter Heifner recover of the said Sally Ladiga the costs of this cause in this court, and in said circuit court.

SALLY LADIGA vs. ROLAND & HEIFNER. Writ of error to the circuit court of Benton county. *Per curiam.*

When this case was before us at a former term, the evidence of title to support the plaintiff's claim was not set out in the bill of ex-

ceptions. It is now before us, but we see nothing in the facts disclosed to induce us to believe that she is entitled to succeed. All the questions involved in this case are very fully covered by the previous decision reported in 9 *Porter*, 488, and we have now nothing to do but to correct a typographical error in the 3d line from the bottom of page 891, where it read, "but he can compel, &c." This should read, "but he cannot compel, &c." Under the influence of the former decision this judgment is affirmed.

Certificate.

THE STATE OF ALABAMA.

OFFICE OF THE CLERK OF THE SUPREME COURT.

I, James B. Wallace, clerk of the Supreme Court of the State of Alabama, do hereby certify that the foregoing pages contain the writ of error, and a transcript of the record, in the case of Sally Ladiga vs. Richard de M. Roland and Peter Heifner, decided at the June term, 1842, of said court, the original of which is now on file and of record in my office.

In testimony whereof, I have hereunto set my hand, and caused the seal of said court to be affixed, this twenty-seventh day [L. S.] of August, in the year of our Lord one thousand eight hundred and forty-two.

JAMES B. WALLACE,
Clerk of the Supreme Court.